

## ORDINANCE NO. 1310

### AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA – INFUSED PRODUCTS IN THE CITY OF TILLAMOOK, AMENDING THE CODE OF THE CITY OF TILLAMOOK, TITLE III, CHAPTER 35 FINANCES; TAXES AND FEES; AND REPEALING ORDINANCE 1295

**WHEREAS**, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

**WHEREAS**, the City of Tillamook wishes to tax the sale or transfer of marijuana and marijuana-infused products within the City.

**The City of Tillamook ordains as follows:**

#### **Section 1. Title.**

This Ordinance shall be known as the Marijuana and Marijuana Infused Product Tax, and shall apply to all areas within the Incorporated City Limits of the City of Tillamook.

#### **Section 2. Purpose.**

For the purpose of the Ordinance, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Tillamook is exercising a taxable privilege. The purpose of the Ordinance is to impose a tax upon the retail sale of marijuana, medical marijuana and marijuana-infused products.

#### **Section 3. Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings.

1. “**Manager**” means the City Manager of the City of Tillamook or his/her designee.
2. “**Gross Taxable Sales**” means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this Ordinance.
3. “**Marijuana**” means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by the Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the

resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

4. **"Marijuana item"** has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.
5. **"Marijuana retailer"** means a person who sells marijuana items to a consumer in this state.
6. **"Oregon Medical Marijuana Program"** means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
7. **"Person"** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
8. **"Purchaser"** means any person who acquires marijuana from a retail seller for any valuable consideration.
9. **"Purchase or Sale"** means the retail acquisition or furnishing for consideration by any person of marijuana within the City. This definition does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.
10. **"Registry identification cardholder"** means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
11. **"Retail sale"** means the transfer of goods or services for any valuable consideration. This definition does not include the transfer or exchange of goods or services between a grower or processor and a seller.
12. **"Retail sale price"** means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.
13. **"Seller"** means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
14. **"Tax"** means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this ordinance

15. **"Taxpayer"** means any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this ordinance.

#### **Section 4. Levy of Tax.**

- A. As described in section 34a of House Bill 3400 (2015), the City of Tillamook hereby imposes a tax of three percent (3%) on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.
- B. The purchaser shall pay the tax to the seller at the time of the purchase or sale of marijuana.

#### **Section 5. Deductions.**

The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser.
- B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

#### **Section 6. Seller Responsible For Payment of Tax:**

- A. Every seller shall, on or before the fifteenth (15<sup>th</sup>) day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the City Manager on forms provided by the City, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. The seller may request or the City Manager may establish shorter reporting periods for any seller if the seller or the City Manager deems it necessary in order to ensure collection of the tax and the City Manager may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the City Manager. The quarters are:
  - First quarter:* January, February, March
  - Second quarter:* April, May, June
  - Third quarter:* July, August, September
  - Fourth quarter:* October, November, December
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the City Manager. Payments received by the City Manager for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the

underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the City Manager, in her or his sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to ensure collection of the tax. The City Manager also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this ordinance shall be held in trust for the account of the City until payment is made to the City Manager. A separate trust bank account is not required in order to comply with this provision.

- D. For good cause, the City Manager may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 7.
- E. Every seller required to remit the tax imposed in this ordinance shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the dispensary and such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The City Manager shall have the right to inspect all such records at all reasonable times.

## **Section 7. Penalties And Interest.**

- A. Any seller who fails to remit any portion of any tax imposed by this ordinance within the time required shall pay a penalty of ten percent (10%) of the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date, on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the City Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.

- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- F. A seller who fails to remit the tax within the required time may petition the City council for waiver and refund of the penalty or a portion of it. The Council may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in Section 9.

#### **Section 8. Failure to Report and Remit Tax-Determination of Tax by City Manager.**

If any seller should fail to make, within the time provided in this ordinance, any report of the tax required by this ordinance, the City Manager shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the City Manager shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this ordinance and payable by any seller, the City Manager shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this ordinance. In case such determination is made, the City Manager shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may appeal such determination as provided in Section 9. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable.

#### **Section 9. Appeal.**

- A. Any seller aggrieved by any decision of the City Manager with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Manager within fifteen (15) days of mailing of the notice of a decision. The City Manager shall fix a time and place for hearing the appeal, as prescribed by the City Council, and shall give the appellant fifteen (15) days written notice of the time and place of the hearing before the City Council.
- B. The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal fees shall be set at \$150 for each decision appealed, and may be adjusted by Resolution of the City Council.
- C. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
- D. The City Council shall afford the parties an opportunity to be heard at an appeal hearing after reasonable notice. The City Council shall take such action upon the appeal it sees fit. The City Council shall at a minimum:

- 1) At the commencement of the hearing, explain the relevant issues involved in the hearing, applicable procedures and the burden of proof.
  - 2) At the commencement of the hearing place on the record the substance of any written or oral ex parte communications concerning any relevant and material fact in issue at the hearing which was made outside the official proceedings during the pendency of the proceeding. The parties shall be notified of the substance of the communication and the right to rebut the communication. Notwithstanding the above, the parties are prohibited from engaging in ex parte communications with the members of the City Council.
  - 3) Testimony shall be taken upon oath or affirmation of the witnesses.
  - 4) The City Council shall ensure that the record developed at the hearing shows a full and fair inquiry into the relevant and material facts for consideration for the issues properly before the City Manager.
  - 5) Written testimony may be submitted under penalty of false swearing for entry into the record. All written evidence shall be filed with the Assistant City Recorder no less than five (5) working days before the date of the hearing.
  - 6) The City Council shall hear and consider any records and evidence presented bearing upon the City Manager's determination of amount due, and makes findings affirming, reversing or modifying the determination.
  - 7) Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.
- E. The action of the City Manager shall be stayed pending the outcome of an appeal properly filed pursuant to this section.
- F. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the summary dismissal of the appeal.
- G. The finding of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

## **Section 10. Refunds.**

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this ordinance, it may be refunded as provided in subparagraph 1. Of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon

which the claim is founded, is filed with the City Manager within one year of the date of the payment. The claim shall be on forms furnished by the City Manager.

1. The City Manager shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The City Manager shall notify the claimant in writing of the City Manager's determination. Such notice shall be mailed to the address provided by the claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify the City Manager of claimant's choice no later than fifteen (15) days following the date City Manager mailed the determination. In the event claimant has not notified the City Manager of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
2. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the City Manager acknowledged the validity of the claim.

### **Section 11. Actions to Collect.**

Any tax required to be paid by any seller under the provisions of the ordinance shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Within three years after the tax becomes payable or within three years after a determination becomes final, the City may bring an action in the name of the City in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105 (as hereafter amended), in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

### **Section 12. Confidentiality.**

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this ordinance. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or

- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City Manager or an appeal from the City Manager for amount due the City under this ordinance; or
- D. The disclosure of information when such disclosure of conditionally exempt information is order under public records law procedures; or
- E. The disclosures of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501 (5).

### **Section 13. Audit of Books, Records or Persons.**

- A. It shall be the duty of every seller liable for the collection and payment to the City of any tax imposed by this ordinance to keep and preserve, for a period of three years and six months, all records, books, reports, income tax reports and other matters required by this ordinance as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the City, which records the City Manager shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain records of marijuana purchase and sales, accounting books and records of income. Sellers must, at a minimum include a cash receipt and deposit journal and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. They shall also reconcile to the seller's income tax reports. If the City Manager finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the City Manager.
- B. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the City Manager or authorized agent of the City Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City Manager may immediately seek a subpoena from the Manzanita Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

### **Section 14. Penalties.**



- A. It is unlawful for any seller or any other person so required to fail or refuse to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the City Manager or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.
- B. Violation of any provision of the ordinance shall be punishable by the general penalty. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefore shall be in addition to any other penalty, interest, sum or charge imposed by this ordinance. Delinquent taxes and fees, penalty and interest imposed by this ordinance may be collected in a civil action.
- C. In addition to the remedies provided by this section, the City Manager may, when deemed appropriate, revoke the seller's business license until taxes, penalties, and fines are paid.
- D. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

#### **Section 15. Forms and Regulations.**

- A. The City Manager is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:
  - 1) A form or report on sales and purchases to be supplied to all vendors;
  - 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this ordinance.

#### **Section 16. Severability.**

The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

#### **Section 17. Savings.**

Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

#### **Section 18. Codification.**

- A. Title III, Chapter 35, Finances, Taxes, and Fees is amended to include all provisions of this ordinance.
- B. Ordinance 1295 is hereby repealed in its entirety.
- C. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word and the sections of the Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 15-19) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

**Section 19. Effective Date.**

This Ordinance shall be in effect 30 days after adoption.

**PASSED FIRST READING** by the City Council this 18<sup>th</sup> day of July, 2016.

**PASSED SECOND READING** by the City Council this 1st day of August, 2016.

**ADOPTED** by the City Council this 1st day of August, 2016.

**APPROVED** by the Mayor this 1st day of August, 2016.

ATTEST:

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Suzanne Weber, Mayor

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Abigail Donowho, City Recorder